GEORGIA MUNICIPAL ASSOCIATION
201 Pryor Street, SW • Atlanta, Georgia 30303 • 404/688-0472 • Fax: 404/577-6663

December 20, 1995 DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

RE: Reply to Opposition to Petition for Reconsideration of Thirteenth Order on Reconsideration

Dear Mr. Caton:

On behalf of the Georgia Municipal Association, and pursuant to 47 C.F.R. § 1.429(g), enclosed for filing in the above-referenced proceeding is the original and eleven (11) copies of the Reply to Opposition to Petition for Reconsideration of the Federal Communications Commission's Thirteenth Order on Reconsideration, MM Docket No. 92-266.

Any questions regarding this filing should be referred to the undersigned.

Sincerely,

Donald W. Schanding
Rate Analyst

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266

TO: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION BY THE GEORGIA MUNICIPAL ASSOCIATION

James A. Calvin
Executive Director Elect
Georgia Municipal Association
201 Pryor Street SW
Atlanta, Georgia 30303
(404) 688-0472

December 20, 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266

TO: The Commission

REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION BY
THE GEORGIA MUNICIPAL ASSOCIATION

Pursuant to 47 C.F.R. § 1.429(g), the Georgia Municipal Association ("GMA") hereby submits this Reply to Oppositions to Petition for Reconsideration filed by the National Cable Television Association, Inc. ("NCTA") and Cox Communications, Inc., Intermedia Partners, L.P. and Jones Intercable, Inc. ("Cox") in the above-captioned proceeding. In its Petition, GMA requested that the Federal Communications Commission ("FCC" or "Commission") reconsider certain rules issued as part of the Thirteenth Order on Reconsideration[1] (the "Thirteenth Order").

[1] In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration (MM Docket No. 92-266), FCC 95-397 (released September 27, 1995).

SUMMARY

GMA has previously filed a petition with the Commission requesting that the Commission reconsider certain rules issued as part of the Thirteenth Order. Specifically, GMA requested the Commission to reverse its decision not to review an operator's entire CPST rate when the Commission receives future cable programming service tier rate complaints, or to allow subscribers and local authorities one opportunity to file complaints regarding the existing CPST rates under the current rules.

In its Petition, GMA argued that many operators did not reduce their rates to the levels permitted by the Commission's rules released February 22, 1994 (the "Revised Rules"). By ceasing its review of operators' entire CPST rates when it receives rate complaints, the Commission will be allowing some operators to "lock in" a rate much higher than permitted by the Commission's rules. To prevent the permanent overcharge, GMA recommended that the Commission continue to review an operator's entire rate, or, at a minimum, allow franchising authorities at least one opportunity to complain about the rates in effect.

NCTA and Cox have filed Oppositions to GMA's Petition. In their Oppositions, NCTA and Cox first argue that the Commission is forbidden from allowing an additional opportunity for franchising authorities to file complaints. However, the Commission has already demonstrated that it understands that it is appropriate in certain circumstances to permit parties to file rate complaints concerning initial rates after February 28, 1994 (i.e., 180 days after September 1, 1993). In any event, there is no requirement under statute for the Commission to cease review of an operator's entire rate when the Commission receives a

rate complaint. In fact, the Commission has already determined that the Commission is permitted to regulate the operator's entire rate after the initial 180-day period.[2]

NCTA and Cox also argue that the overcharges GMA describes will be small or non-existent because external costs and inflation have reduced the overcharge. However, NCTA and Cox are incorrect. Large overcharges continue to exist, and will be permanently built into future rates if the Commission does not reverse its decision not to review an operator's entire CPST rate.

Neither NCTA nor Cox argues that two of GMA's premises are false: there are operators who failed to adjust their rates to the levels permitted by the Revised Rules, and subscribers and franchising authorities have been prohibited from complaining about the overcharges because the operators have not changed their rate structures or changed their channel lineups since the Revised Rules went into effect. Neither the NCTA nor Cox wishes for the Commission to continue to review an operator's entire rates when a complaint is filed. However, neither party presents an alternative way for the Commission to eliminate the overcharge.

I. The Commission has Demonstrated that It Is Appropriate in Certain Circumstances to Allow Complaints Regarding Initial Rates to Be Filed after February 28, 1994

NCTA and Cox argue first that the 1992 Cable Act forbids the Commission from allowing franchising authorities to complain about rates that are unreasonable because, according to Cox, "Pursuant to the 1992 Cable Act, if no complaint was filed on the operator's initial rate by February 28, 1994, then interested parties lost the opportunity to

[2] FCC Press Release, "FCC Issues Information Regarding Cable Rate Complaint Process," released February 9, 1994 at 1.

dispute rates until another rate adjustment was made." However, the Commission clearly understood that the February 28, 1994 deadline could not be viewed as absolute and should not be followed blindly. For example, the Commission allowed the 180-day period to begin running on the effective date of the revised rules for small systems. The Commission realized that special circumstances could exist (such as the introduction of a new system of rate regulation) which requires that the Commission permit complaints to be filed after February 28, 1994. In any event, the Commission is not prohibited by statute from continuing its practice of reviewing an operator's entire rate when it receives a rate complaint.

II. Operators' Current Overcharges are not Small or Non-existent

NCTA and Cox argue that the Commission should not be concerned with the operators' failure to lower their rates to comply with the revised rules because it is "likely" that the difference between the permitted rates and the actual rates (the "Gap") has been reduced due to inflation and external costs. NCTA and Cox argue that Gap is now smaller than it once was because inflation and external costs increases have increased the operators' permitted rates so that the permitted rates are now closer to the actual rates than they were in the Summer of 1994. We agree that the overcharges are smaller than they were in the Summer of 1994. However, the overcharges still exist and they are large.

Cox begins with the premise that the reduction which should have been made as a result of the Commission's revised rules was 7%, and appears to assume in its calculations that all operators' permitted rates should have been reduced by that 7% figure. Cox therefore assumes that the Gap for every operator was 7% when the Revised Rules went into effect. Cox continues by implying that operators who did not adjust have lost inflation adjustments

and external cost adjustments, which reduces the 7% overcharge to nothing. First, Cox fails to realize that some operators' adjustments under the revised rules should have been far more than 7% and others should have been less than 7% (for several reasons, including the use of different time periods for data gathering and a new benchmark formula). For operators whose rate reductions in the second round should have been more than 7%, any adjustments for inflation and external costs would have to be more than 7% to eliminate the overcharge.

Second, Cox overestimates the amount of inflation and external cost which reduced the Gap. The only inflation adjustment which has permanently reduced the Gap is the 2.15% adjustment for the period from September 1, 1993 through June 30, 1994. The inflation adjustment for the period from June 30, 1994 to June 30, 1995 has not been lost to the operators. This adjustment can be taken until August 31, 1996.[3] Therefore, Cox should not look at this adjustment as serving to decrease the Gap. The decrease in the Gap caused by the 2.96% inflation adjustment is only a temporary one which exists from the first date that an operator could have requested its rate adjustment (October 1, 1995) until the operator claims its inflation adjustment for that period (which could occur today if the operator so chose). In other words, the Gap has not been permanently decreased by 5.17% for inflation. The permanent decrease in the Gap is only the 2.15% inflation adjustment. The remainder of the 5.17% inflation adjustment will be recovered by the operators in their next rate filing.

The same logic applies to external cost adjustments: operators may recover costs up to one year in the past, so the only costs which permanently decreased the Gap are costs

[3] FCC Public Notice, "New Annual Inflation Adjustment Figure for Cable Operators Now Available," DA 95-2086, released October 2, 1995 at 1.

incurred between April 1, 1994 and December, 1994 (assuming operators filed a Form 1210 sometime before January 1, 1996).[4]

For an operator whose permitted rate decreases as a result of the Revised Rules by substantially more than 7%, it is unlikely that the inflation adjustment of 2.15% and external costs increases for an eight-month period would eliminate the entire overcharge.

NCTA makes a similar argument, claiming that the overcharge that operators have locked in is "de minimus, if not non-existent" because the overcharges have been reduced by external costs which the operator has foregone. It states that "...while GMA argues that these systems can 'lock in' a 'permanent overcharge' of 40 cents (in the example it gives), in fact there may be much less of a cost difference, if any difference at all, in the rates that may be charged now." However, in the example we presented in our Petition (in which the operator has locked in an overcharge of 40 cents), we compared the actual rate to the permitted rate from the most recent Form 1210 which the operator filed with the local franchising authority to justify its basic service tier rate. The Form 1210 already took into account those adjustments to which the operator was entitled. Therefore, taking into account every increase to the permitted rate to which the operator was entitled as of its most recent Form 1210 filing, the overcharge was still 40 cents. (As we stated in our Petition, the overcharge as of the date that the Revised Rules went into effect was 60 cents.) Generally, while external costs and inflation may have reduced the degree to which the operators overcharged, the current overcharge is by no means de minimus or nonexistent. And, if the Commission ceases to review the base rates upon which future increases will be built, these overcharges will be permanently built in to the operators' rates.

---

[4] A system must file Form 1210 at least annually in order to increase its rates subsequently for changes in external costs (47 CFR § 76.922(d)(3)(i)).

CONCLUSION

As we did in our Petition, GMA again urges the Commission to reverse its decision in the Thirteenth Order on Reconsideration not to review an operator's entire CPST rate when the Commission receives future cable programming service tier rate complaints, or, at a minimum, allow subscribers and local authorities one opportunity to file complaints regarding the existing CPST rates.

Respectfully submitted,

James A. Calvin
Executive Director Elect
Georgia Municipal Association
201 Pryor Street SW
Atlanta, Georgia 30303
(404) 688-0472

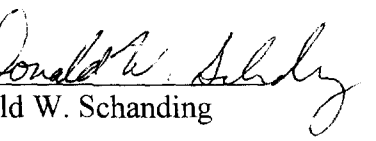
December 20, 1995

CERTIFICATE OF SERVICE

I, Donald W. Schanding, certify that I have this 21st day of December, 1995, caused to be delivered by regular mail, postage prepaid, the foregoing Reply to Oppositions to Petition for Reconsideration to:

Daniel L. Brenner
1724 Massachusetts Avenue, NW
Washington, D.C. 20036
Counsel for the National Cable Television Association, Inc.

Peter H. Feinberg
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, D.C. 20037
Counsel for Cox Communications, Inc., *et al*

By: 
Donald W. Schanding